

## FREQUENTLY ASKED QUESTIONS ABOUT THE APPLICATION PROCESS

The following “frequently asked questions” (FAQs) and answers prepared by the Natural Resource Damage Program (NRDP) are relevant to the Upper Clark Fork River Basin (UCFRB) Restoration Grant Applications.

### **Questions about the application and grant award process**

***Q: I have an idea that I think would meet the legal criteria for funding but I’m not sure. Should I go ahead and submit an application?***

A: No. We encourage prospective applicants not to spend a lot of effort on an application for a project that questionably meets the legal criteria. We recommend that you instead submit a Pre-application, which consists of a project abstract and a map. It offers an applicant the opportunity to obtain a non-binding opinion from the State on whether a particular conceptual proposal may be an appropriate project for funding consideration before going through the more time-consuming process of preparing a project application.

***Q: Are there areas in the UCFRB that are “off-limits” to funding consideration at this time?***

A: Yes. Proposals for work in certain areas of the Basin that are still subject of incomplete remedy decisions or unresolved litigation will not be considered for funding. Those areas are described in further detail below. This guidance applies to all types of grant requests, including project development grants, regardless of the amount requested. When in doubt as to whether your project fits in one of the categories below, we suggest you consult the NRDP or submit a Pre-application before spending a lot of time and effort on an application.

The State has not settled its restoration damage claim for three sites:

- Smelter Hill Area Upland Resources (“Anaconda Uplands”): The Anaconda Uplands is an area approximately 18 mi<sup>2</sup> north and south of Anaconda that is comprised of portions of Smelter Hill, Stucky Ridge, and the Mount Haggin Wildlife Management Area.
- Butte Area One Ground and Surface Water Resources: Butte Area One extends from the upper end of the Metro Storm Drain in Butte to the west or downstream end of the former location of the Colorado Tailings along Silver Bow Creek.
- Upper Clark Fork River Aquatic and Riparian Resources: The Upper Clark Fork River site encompasses the floodplain of the Upper Clark Fork River from the Warms Springs Ponds to the Milltown Reservoir.

As set forth in the *UCFRB Restoration Plan Procedures and Criteria (RPPC)* minimum qualifications, if consideration or implementation of a project would interfere, potentially interfere, overlap, or partially overlap with the State’s remaining natural resource damage claims in the Montana v. ARCO lawsuit or with proposed restoration determination plans for these three sites, the project is not eligible for funding consideration. Such grant projects, which include restoration actions or property acquisitions within the Upper Clark Fork River floodplain, will not be considered until completion of Montana v. ARCO. Work in the tributary watersheds to the Upper Clark Fork River may be considered on a case-by-case basis.

Furthermore, projects in Superfund operable units where the remedial design has not been completed, such as areas within the Anaconda Regional Wastes, Water and Soils operable unit, will also be disfavored if a potential exists for the proposed restoration activities to be accomplished under remediation or to interfere with proposed remediation.

Finally, projects located in the Big Blackfoot River watershed are ineligible for funding at this time, unless they are in proximity of the Milltown Dam area and will not interfere with the restoration work that will occur at the Milltown NPL site that is covered by the joint remediation/restoration Consent Decree, or unless they would have the effect of restoring or significantly facilitating the restoration of natural resources or lost services in the UCFRB. As set forth in the *RPPC*, projects to restore native trout in the Big Blackfoot River watershed outside of the Milltown Dam area will not be considered until there is scientific determination that efforts to restore native trout restoration in the UCFRB would be uneconomical or impractical. This could be well after implementation of the response actions along the Upper Clark Fork River.

***Q: What is the typical turnaround time for proposals of \$25,000 or less?***

A: About 3-4 months. The Trustee Restoration Council, which makes the final decision on these proposals, always meets in late summer and late fall; other meetings are scheduled as needed. The Advisory Council, which meets monthly, also reviews and makes funding recommendations on these proposals.

***Q: Is funding available to help develop project ideas and collect the information needed to submit an application?***

A: Yes. You can apply for a project development grant (PDG) to help develop a project. If the planning costs are \$25,000 or less, use the Short-Form. If the costs are greater than \$25,000, use the Long Form.

***Q: If a project development grant is funded, does that mean the implemented project will be funded?***

A: No. The approval of a project development grant **does not** constitute or guarantee approval of the full project. The full project will need to go through the *RPPC* grant evaluation and funding selection process. Consistent with NRDP guidance, the evaluation of a project development grant includes the evaluation of the full project to the extent possible, since only sound restoration or replacement proposals should be considered for start-up funding.

***Q: What are the contractual obligations of successful grant recipients?***

A: An overview of the grant recipient's contractual obligations, such as procurement, insurance and reporting requirements, is provided in the application. A model grant agreement is also available on the NRDP website ([www.doj.mt.gov/lands/naturalresource.asp](http://www.doj.mt.gov/lands/naturalresource.asp)) or upon request from the NRDP.

***Q: If the Governor approves a project, can expenses for activities in the approved scope of work that were incurred before the Governor's approval be reimbursed?***

A: No. Expenses incurred before the grant agreement becomes effective will not be reimbursed. Most grant agreements are effective upon the date of signature of both the grant recipient and State. The earliest effective date of a grant agreement will be the date of the Governor's approval of the project, which is typically in December for projects greater than \$25,000.

***Q: Where do non-profit organizations fit in the applicant eligibility type?***

A: They are treated as private entities.

***Q: If my grant proposal is approved for funding, will I have to competitively bid the work that will be conducted?***

A: Probably. As set forth in the *RPPC* and the grant agreement between grant recipients and the NRDP, expenditures of grant funds must comply with applicable state procurement laws and regulations. State agencies must comply with the provisions specific to state agencies; counties must comply with the provisions in state law specific to counties and any other applicable local procurement regulations. For a private or non-profit entity applying in partnership with a governmental entity, that governmental entity must have procured your services in compliance with state procurement laws that are applicable to that entity. A private or non-profit entity that is the sole grant recipient must meet the procurement regulations specific to state agencies. Those regulations are summarized on the NRDP's *Guidance on Confidentiality, Procurement Provisions and Equipment Policy*, which is available from the NRDP website or upon request. In general, these regulations require that the project must be bid if it exceeds \$5,000. If the project is between \$5,001 and \$25,000, then a limited solicitation is required; above \$25,000, a formal invitation to bid or request for proposal is required.

Grant recipients may use vendors that have been competitively procured by the State Procurement Bureau for use by all state agencies, subject to agreement by the vendor. Contact Kathy Coleman of the NRDP ([nrdp@mt.gov](mailto:nrdp@mt.gov); 444-0205) if you would like to pursue this option.

To assure that grant recipients meet these applicable procurement requirements, grant recipients will be required via the grant agreement provisions to provide documentation of the competitive procurement process used to procure supplies, services, and construction.

***Q: Can you keep information provided in the application confidential?***

A: Usually not. With rare exceptions, the information provided in the application is available for public review. Refer to the *Guidance on Confidentiality, Procurement Provisions and Equipment Policy* available from the NRDP website for details on the limited circumstances in which information can be kept confidential and the procedures applicants must follow to keep information confidential. Applications are widely distributed; applicants should be prepared for substantial public exposure and scrutiny.

***Q: Can I apply for a multi-year project?***

A: Yes. There are no limits on multiple year grants or time to expend grant amounts in the *RPPC*. The Trustee has adopted a multi-year funding policy that gives the Trustee the flexibility to approve full or partial funding of multi-year projects. Projects fall into one or two categories:

- Multi-year projects that would be approved with the expectation that they will be funded to their completion or, at least, for a certain number of years. Projects in this category would not be formally reconsidered for approval in subsequent years; however, the Trustee would annually evaluate the project's funding needs and approve each subsequent year's budget for the project. As part of this evaluation, the Trustee could decide to discontinue funding.

- Multi-year projects that would be approved for the first year's funding with the expectation that they will be resubmitted for approval in a subsequent year.

In determining whether to apply for multiple years of funding, applicants should determine whether the project could be implemented in a phased matter and derive significant public benefits from each phase regardless if the subsequent phase is funded. For example, a project to develop a recreational trail along multiple miles of stream corridor could be applied for and funded in a phased, mile-by-mile basis. Alternatively, some multi-year projects need to be funded in their entirety to derive substantial benefits. An example would be construction of a water supply reservoir that will take multiple years to complete. The Trustee ultimately decides whether funding commitments should be made for multiple years, so even though a project is proposed as a multi-year project, only one year of funding could be approved. This would be likely for a project whose future scope or priority over other projects is uncertain.

Applicants applying for multi-year projects need to provide the justification for the multi-year request in the criteria narrative for the Cost-Effectiveness *RPPC* criterion. In that narrative, applicants can compare the preferred multi-year approach to a phased funding approach and indicate what benefits, if any, would be derived from funding multiple years compared to phased funding. For example, if cost-savings would occur with a multi-year request that would not otherwise occur, the applicant should identify these savings in this criteria narrative.

While there is no specified limit in the *RPPC* for number of years that can be funded, the NRDP advises that multi-year requests not exceed more than five years. Most projects can be planned and implemented in five years or less, however, some require long-term monitoring beyond five years. In such cases, applicants should identify those long-term monitoring needs but only apply/budget for the work to be completed in five years or less. For example, for a stream restoration project that involves one year of construction and ten years of needed monitoring to determine success, applicants should identify the long-term monitoring needs but only request funding for the construction work and five years of monitoring. After five years, the NRDP will determine the need for and method of accomplishing additional monitoring.

***Q: What are eligible matching funds?***

A: Eligible matching funds are those that are specific to the activities for which Restoration funds are requested. Take, for example, the Butte and Anaconda waterline projects that involve replacement of leaking water lines covering certain street sections. Any funds besides Restoration funds that would be applied to replacement work in these sections can be credited as matching funds. But other funds spent to replace waterlines in other locations would not be credited as matching funds, nor would other funds spent on related water system improvements. Similarly, if Restoration funds are requested for stream restoration work in a particular stream segment, work on that segment funded by other sources can be credited as a match. But other funds covering work on other stream segments that would be conducted independent of the UCFRB grant project would not be credited as matching funds.

For projects that are part of a larger project for which future funding will be sought, the State will only consider the matching funds dedicated to the phase of the project that is to be funded by Restoration Funds. An example would be an acquisition that includes lands slated for both state

and federal ownership. If the Restoration fund request is specific to the state parcel, then the funding for acquisition of the federal parcels would not be considered as eligible matching funds.

In addition to being specific to the proposed activity, matching funds needed to be provided over a similar timeframe as that of the proposed project. Applicants cannot use past funding for earlier phases of the project as matching funds. In general, eligible matching funds are those that would be provided for proposed project activities that will occur after the date of the Restoration fund application submittal.

Matching funds can be matching dollars or in-kind contributions. Matching dollars are project-specific funds provided by the applicant or another sponsoring entity. In-kind contributions are project-specific, non-dollar contributions that have an associated monetary value. Examples of in-kind expenses include donated labor and equipment. For land acquisition projects, matching funds payments or donations that make up the difference between the funding request and the appraised value can be considered as an in-kind match.

Applicants are required to provide verification of committed matching funds as well as documentation of applied for or pending funds. It is important to consider that, if a project is approved, the grant recipient will be obligated to provide the percentage match commitment reflected in the final work plan document and to provide adequate documentation of all matching funds (both in-kind and cash matches.)

***Q: Are appraisals needed for land acquisitions?***

A: Yes. As set forth in the *RPPC*, the State will evaluate whether the land, easements, or other property interests proposed for acquisition are being offered for sale at market value. Normally, an appraisal by a qualified appraiser, which complies with the *Uniform Standards of Professional Appraisal Practice*, is used in determining the purchase price of the property and that appraisal should be provided to the State with the application. The State will then review and evaluate that appraisal and may conduct a review appraisal or a reappraisal. Funding will be contingent upon the State's verification that the purchase price is at or below the fair market value. Before proceeding with an appraisal, the applicant should: 1) determine whether there are any encumbrances on the property that may affect its value; and 2) consult with NRDP staff and reach an agreement with staff as to who will appraise the property and the instructions to be provided to the appraiser. The NRDP encourages applicants for proposed land acquisitions to retain the services of a land acquisition expert to help plan and execute these projects.

***Q: How will the Silver Bow Creek Watershed Restoration Plan be considered as a factor in funding decisions?***

A: The *Silver Bow Creek Watershed Restoration Plan* identifies and prioritizes restoration needs in the Silver Bow Creek watershed, which encompasses about 500 square miles of lands that drain into Silver Bow Creek between Butte and Warm Springs Ponds. The Governor approved this plan and an associated amendment to the *RPPC* in December 2005. For proposals that will occur in this watershed, applicants need to address, and the NRDP will evaluate, the proposal's consistency with the priorities identified in the plan via the criteria narrative for the Ecosystem Consideration *RPPC* criterion. Copies of the watershed plan are available from the NRDP website ([www.doj.mt.gov/lands/naturalresource.asp](http://www.doj.mt.gov/lands/naturalresource.asp)) or upon request.

## **Questions about the types of eligible projects**

***Q: Are there examples of the types of restoration and replacement projects that are eligible for funding?***

A: Yes. Chapter 5 of the *RPPC* provides examples of possible restoration and replacement projects. Another source for examples of eligible projects are those that have been funded in the last three grant cycles. This information is available from the NRDP website, [www.doj.mt.gov/lands/naturalresource.asp](http://www.doj.mt.gov/lands/naturalresource.asp)

***Q: If a project addresses a mining impact, doesn't that qualify it for funding consideration?***

A: No. Just because a project addresses a mining impact does not mean it is eligible for funding consideration. Restoration funds may only be used to restore or replace the injured natural resources and/or the services lost as a result of releases of hazardous substances by ARCO or its predecessors that were the subject of Montana v. ARCO. The application provides a summary of the injured resources and lost services covered in Montana v. ARCO, which are described in further detail in Chapter 2 of the *RPPC*. As indicated therein, Montana v. ARCO did not cover all types of impacts from mining activities in the Basin; rather, it covered specific injured natural resources and lost services.

Restoration refers to actions taken to return the injured resources and services to their baseline condition. Replacement actions create or improve resources and services that are the same as or very similar to the ones that have been injured or lost. A project that simply addresses the impacts of mining, for example subsidence, would not be eligible for Restoration funds unless the project also addresses, in a substantial way, the adverse impacts of hazardous substance contamination on natural resources. In addition, projects do not have to address mining impacts to be eligible for funding. For example, an eligible replacement project would be one that would improve degraded aquatic habitat outside an injured area, regardless of the cause of degradation, because the project would enhance a resource equivalent to the injured resource (aquatic habitat) covered under Montana v. ARCO.

***Q: Can Restoration funds be used to compensate for the economic damages caused by historic mining activities to private individuals and entities, such as the loss of agricultural productivity caused by the emissions from the Anaconda smelter?***

A: No. Private individuals, including farmers and ranchers, have suffered economic harm as a result of injuries to the State's natural resources in the UCFRB. However, the natural resource damage provisions in federal law do not provide for the recovery of damages sustained by private individuals or entities, including losses of agricultural productivity. They only provide for recovery of damages to public natural resources and services. Hence, the State made no claim for such economic losses in Montana v. ARCO, and spending Restoration funds for such purposes would not be permissible. The State can, however, fund work on private land if the principal result of such work would be to replace or restore injured resources or lost services.

***Q: Can Restoration funds be used to plan or implement economic development projects?***

A: No. Restoration funds can only be used to restore or replace the injured natural resources and/or the services lost as a result of releases of hazardous substances by ARCO or its predecessors that were the subject of Montana v. ARCO. If a project's primary purpose is to stimulate economic development, then it will not meet this legal threshold for funding.

Restoration or replacement projects can, however, result in secondary economic benefits. As areas are restored, they will become more attractive to and frequented by area residents and visitors. For example, improving fish habitat in the UCFRB will improve fishing opportunities, increase angler-days, and thereby help support the local businesses that are tied to outdoor-based recreation and tourism. Also, restoration and replacement projects can often involve the employment of local individuals and expenditures that contribute to the local economy.

***Q: Are education projects targeted to schools eligible for funding?***

A: Education projects targeted to schools are eligible for funding if they specifically pertain to the natural resources or services that were the subject of Montana v. ARCO or to acceptable replacements of those resources and services. This requirement applies to any work conducted as part of an education project—both field and classroom work. Additionally, the project must not involve activities that would replace normal school funding.

Applicants considering applying for funding of school education projects should be aware of the already approved educational projects to eliminate the potential for duplication of effort. In 2005, Montana Tech started implementing a 3-year Clark Fork Watershed Education Program for primary and secondary level school children and teachers in schools from Butte to Bonner. Each phase of the program includes student and teacher training in the classroom and the field. Students will use Silver Bow Creek and the Clark Fork River as large-scale outdoor laboratories in a field science program. The NRDP has also produced an educational trunk and multi-media CD's for areas schools about the injuries to and restoration of natural resources in the UCFRB. For more information on funded education projects and available materials, contact Kathy Coleman of the NRDP ([nrdp@mt.gov](mailto:nrdp@mt.gov); 444-0205).

***Q: Can Restoration funds be used to identify, preserve or protect cultural or historical resources?***

A: This is a determination that needs to be made on a project-specific basis. Cultural and historic resources were not natural resources covered under the State's claims in the Montana v. ARCO lawsuit; therefore, in most cases, such activities would not meet the legal threshold for restoration funding. However, under a few circumstances, Restoration funds may be used for the identification, preservation or protection of cultural and historic resources when those activities relate specifically to the restoration or replacement of injured natural resources. First, Restoration funds may be able to be used to identify tribal cultural resources or tribal religious sites that are within a restoration project area and to coordinate with the state and Tribes to develop measures to protect these resources or sites. Second, Restoration funds may be able to be used to identify historical and archeological sites that may be negatively impacted by restoration activities. Finally, Restoration funds may be able to be used for appropriate mitigation should an approved restoration activity require destruction of a significant historical or cultural resource, if that mitigation is required by an applicable law or regulation. Given the complexity of this determination, we recommend you consult the NRDP before applying for Restoration funds for any activities related to cultural or historical resources.

***Q: Are weed control activities eligible for funding consideration?***

A: This is a determination that needs to be made on a case-by-case basis. To date, Restoration funds have only been approved for weed control activities that are either necessitated by or targeted to approved restoration activities. For example, funding has been approved for "construction weed management" activities associated with soil disturbances caused by

implementation of an approved restoration project such as disturbances that occur with streambank and stream channel restoration activities and development of off-stream watering facilities. Funding has also been approved for initial weed management efforts on lands purchased with Restoration funds. Another example of weed control activities targeted to an approved restoration project would be those associated with increased public access that resulted from development of a recreational trail funded with Restoration funds.

Alternately, some weed control requests that have been broad-based and not associated with specific restoration activities have not been approved for funding. A 2002 proposal to conduct widespread weed spraying in Anaconda-Deer Lodge County did not pass minimum qualification for two major reasons: 1) the proposal lacked sufficient information on the type and extent of weed problems, on the demonstrated effectiveness of the proposed approach specific to area soil and vegetation conditions, and on the long-term management activities; and 2) the proposal was unlikely to significantly restore wildlife habitat and related services given the current land uses and wildlife habitat potential of the project area.

In addressing the Applicable Policies, Rules, and Laws *RPPC* criterion, applicants for projects that involve land management activities are asked to indicate how they have or will meet any applicable weed management requirements and what efforts they have made or will make to coordinate with the local weed control district. Applicants for land acquisition projects should be aware that via SB259 passed by the 2005 Legislature, transfer of property to non-federal public ownership is subject to certain weed management requirements that must be incorporated into the purchase agreement.

The Restoration Fund should not be viewed as a fund to replace already-established funding mechanisms to control noxious weeds. Under state law, weed control is a landowner responsibility. As set forth in the *RPPC* under the Normal Government Function criterion, activities for which a governmental agency would normally be responsible or that would receive funding in the normal course of events will not be funded. Some weed control activities would fall into such a category.

Similar to other projects, the feasibility, cost-effectiveness, and benefit:cost relationship of the proposed weed control activities will greatly influence a funding decision. Efforts to control weeds should be from an integrated approach, which involves the use of best control techniques for target species in a planned, coordinated program to limit the impact and spread of the weed and the uses of a variety of control methods targeted to site-specific conditions.